

Nicholas J. Henderson
nhenderson@portlaw.com
MOTSCHENBACHER & BLATTNER, LLP
117 SW Taylor Street, Suite 200
Portland, OR 97204
Telephone: (503) 417-0500
Facsimile: (503) 417-0501

Proposed Attorneys for Debtor
Earth Class Mail Corporation

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Earth Class Mail Corporation,
Debtor.

Case No. 15-30982-tmb11

DEBTOR'S MOTION FOR ORDER
AUTHORIZING CONTINUED USE OF
EXISTING BANK ACCOUNTS AND
CASH MANAGEMENT SYSTEM

EXPEDITED HEARING REQUESTED

Earth Class Mail Corporation (the "Debtor"), as debtor in possession moves the Court (the "Motion") pursuant to Sections 105(a), 345(b), 363 and 553 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), and Rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for entry of an order: (a) authorizing the Debtor's current bank accounts (the "Bank Accounts") and continued use of existing business forms and checks; (b) authorizing, but not directing, continued use of existing cash management system; (c) waiving certain investment and deposit guidelines of Section 345 of the Bankruptcy Code and of the Office of the United States Trustee (the "Guidelines") on an

interim and final basis;¹ and (d) providing any additional relief required in order to implement the foregoing. In support of this Motion, the Debtors respectfully state as follows:

Background

1. On February 27, 2015 (the "Petition Date"), the Debtor filed herein a voluntary petition under Chapter 11 of the Bankruptcy Code. As of the date hereof, no trustee or examiner has been requested or appointed and no official committee of creditors has been appointed.

2. The Debtor is an Oregon corporation headquartered in Beaverton, Oregon. The Debtor is the leading commercially available on-line postal mail solution for consumers and small businesses to manage inbound postal mail, including mail scanning, check depositing and parcel forwarding. The Debtor is taxed as a C corporation for federal income tax purposes.

3. The Debtor's primary objective in this Chapter 11 case is to sell its business as a going concern through a section 363 sale process as soon as is practical.

4. Additional background information about the Debtor is contained in the declaration of Stacey Lee filed in support of the Debtor's first day motions.

5. Prior to the commencement of this Chapter 11 case, the Debtor maintained its bank accounts at U.S. Bancorp and Comerica Bank. It is also a counterparty to agreements with payment card processing companies, including Litle & Co and American Express (the "Payment Card Processors"), to facilitate the collection of customer card payments. All of the Debtor's customers pay for their purchases using a credit card, debit card, PayPal account or similar electronic payment method. Consequently, the Debtor does not collect funds directly from customers but from the Payment Card Processors. Under their agreements with the Debtor, the

¹ The Guidelines were issued in order to assist the U.S. Trustee in supervising the administration of Chapter 11 cases. Such Guidelines require Chapter 11 debtors to, among other things, do the following:

- a. Close all existing bank accounts and open new accounts which must be designated debtor-in-possession bank accounts;
- b. Establish and maintain separate debtor-in-possession accounts for the payment of taxes and separate debtor-in-possession accounts for cash collateral; and
- c. Obtain and utilize new checks for all debtor-in-possession accounts which bear the designation "Debtor-in-Possession" and contain certain other information related to the Chapter 11 case.

Motschenbacher & Blattner, LLP

117 SW Taylor Street, Suite 200

Portland, OR 97204

Phone: (503) 417-0500

Fax: (503) 417-0501

1 Payment Card Processors periodically remit payment to the Debtor, less their processing fee, via
 2 ACH transfer to bank accounts designated by the Debtor. In these relationships, the Debtor
 3 functions as the merchant while the Payment Card Processors are themselves responsible for
 4 collecting payment from each customer. Under the terms of these agreements, the Debtor is
 5 obligated to pay processing fees, periodic service charges and other fees to participating banks
 6 and is responsible for all chargebacks under the payment cards (including charges associated
 7 with lost or damaged goods, customer complaints and similar disputes) (collectively, the
 8 “Payment Card Obligations”).

9
 10 6. On the Petition Date, the Debtor was liable to the Payment Card Processors for
 11 certain accrued Payment Card Obligations, some of which are contingent and unliquidated
 12 (collectively, the “Prepetition Payment Card Obligations”). The Debtor estimates that the total
 13 amount of the Prepetition Payment Card Obligations is unlikely to exceed \$1,000.

14 **Jurisdiction**

15 7. This Court has jurisdiction over this matter pursuant to 28 USC § 157 and 1334
 16 and LR 2100.1. Consideration of this motion constitutes a core proceeding within the meaning
 17 of 28 USC §§ 157(b)(2)(A) and (G). The statutory predicates for the relief sought by this motion
 18 are sections 105, 362, 363, 549 and 1108 of the Bankruptcy Code. Venue is proper under 28
 19 USC § 1408.

20 **Relief Requested**

21 8. By this motion, the Debtor seeks entry of an order allowing the Debtor to (a)
 22 continue to use the Bank Accounts under existing account numbers without interruption; (b)
 23 maintain its Cash Management System in substantially the same form as described in the
 24 Motion; (c) implement ordinary course changes to its Cash Management System; and (d) open
 25 and close bank accounts; provided, however, that (i) Debtor gives notice to the Office of the
 26 United States Trustee and any official committee appointed in this Chapter 11 case prior to

opening or closing a bank account, and (ii) any such action is not prohibited by any other agreement Debtor may be a party to. Any new domestic bank account opened by Debtor shall (a) be opened at a bank that has an executed a uniform depository agreement on file with the Office of the United States Trustee for the District of Oregon or at a bank that is willing to execute such an agreement, and (b) be established at an institution insured by the FDIC or the FSLIC and that is organized under the laws of the United States or any state therein. The Debtor further requests (i) that the Court hold an expedited hearing on this motion and find that the relief sought by this motion is necessary to avoid immediate and irreparable harm to the estate, (ii) that the order on this motion be entered as soon as is reasonably practical, notwithstanding the 21-day period otherwise provided in Bankruptcy Rule 6003(b), and (iii) that the order on this motion become effective immediately upon its entry, notwithstanding the 14- day stay otherwise provided in Bankruptcy Rule 6004(h). A proposed form of order is attached as **Exhibit A**.

Points and Authorities

9. The Office of the United States Trustee has established certain operating guidelines for debtors in possession. These guidelines require, among other things, that a Chapter 11 debtor close all existing bank accounts and open new DIP bank accounts. The Debtor seeks a waiver of any requirement that it close its Bank Accounts. Absent this relief, the Debtor would suffer significant disruption and delay in collecting revenues from customer sales. The administrative delays that would occur if the Debtor were required to notify its Payment Card Processors of its designation of a new bank account for transferring funds to it could be substantial and could cause immediate and irreparable harm to the estate.

10. Chapter 11 debtors are often permitted to continue to use their prepetition banks accounts in this district and elsewhere around the country. See e.g. *In re C&K Market, Inc.*, Case No. 13-64561-fra11 (Bankr. D. Or.) [ECF Doc #68]; *In re Blue Heron Paper Company*, Case No. 09-4092-rld11 (Bankr. D. Or.) [ECF Doc # 31]; *In re Lumber Products*, Case No. 12-32729-

1 elp11 (Bankr. D. Or.) [ECF Doc # 60]. In fact, bankruptcy courts routinely permit Chapter 11
 2 debtors to maintain their existing bank accounts and cash management systems, generally
 3 treating requests for such relief as a relatively “simple matter.” *In re Baldwin-United Corp.*, 79
 4 B.R. 321, 327 (Bankr. S.D. Ohio 1987); *see also Charter Co. v. Prudential Ins. Co. of Am. (In re*
 5 *Charter Co.)*, 778 F.2d 617, 621 (11th Cir. 1985) (holding that allowing debtors to use their pre-
 6 petition “routine cash management system” was entirely consistent with applicable provisions of
 7 the Bankruptcy Code).

8 11. The Debtor undoubtedly is indebted to its Payment Card Processors for
 9 Prepetition Payment Card Obligations based on prepetition sales. The monies owed to the Debtor
 10 by the Payment Card Processors is critical to the operation of its business. The Payment Card
 11 Processors may be unwilling to remit those funds to the Debtor, however, until all Prepetition
 12 Payment Card Obligations have become known and liquidated in amount and sufficient reserves
 13 have been established to secure payment of their claims for those obligations. In order to make
 14 much needed cash available to the Debtor while, at the same time, providing assurance to the
 15 Payment Card Processors that their prepetition claims for Payment Card Obligations will be paid,
 16 the Debtor seeks an order (i) permitting the Payment Card Processors to exercise their setoff
 17 rights with regard to the Prepetition Payment Card Obligations against amounts that they hold or
 18 collect from prepetition sale transactions, in each case, consistent with the parties’ ordinary
 19 course of business prior to the Petition Date, (ii) authorizing Litle & Co. and American Express
 20 to process all chargebacks for returned items in the normal course of business, and (iii)
 21 modifying the automatic stay of section 362 as necessary to authorize such setoffs and payments.
 22 Granting this relief is in the best interests of the estate as it will prevent any unnecessary
 23 disruption and delay in collecting revenues from prepetition customer sales. In any event,
 24 because the Payment Card Processors have setoff rights for their prepetition claims for Payment
 25

1 Card Obligations, permitting them to exercise those rights will not adversely affect the interests
2 of other creditors.

3 12. To protect against the possible inadvertent payment of pre-petition claims, Debtor
4 will immediately advise its Banks not to honor checks issued prior to the Petition Date in
5 accordance with the stop payment procedures designated in the agreements governing the
6 relationships between Debtor and its Banks, except as otherwise expressly permitted by an order
7 of the Court and directed by Debtor. Importantly, Debtor possesses the capacity to draw the
8 necessary distinctions between pre-petition and post-petition obligations and payments without
9 closing the Bank Accounts and opening new ones.

10 13. Time is of the essence with respect to the Debtor's need for the relief requested in
11 this motion. For the reasons indicated above, the requested relief is necessary to avoid
12 immediate and irreparable harm to the estate. Accordingly, the Court should grant the requested
13 relief on an expedited basis pursuant to an order that will become effective immediately upon its
14 entry, notwithstanding the 21-day period otherwise provided in Bankruptcy Rule 6003(b) or the
15 14-day stay otherwise provided in Bankruptcy Rule 6004(h).

16 Notice

17 14. Notice of this motion has been given to, among other parties, the United States
18 trustee and the creditors holding the 20 largest unsecured claims. Further notice is impractical in
19 the circumstances. The Debtor submits that the foregoing constitutes good and sufficient notice
20 and that no other or further notice need be given in the circumstances.

21 WHEREFORE, the Debtor requests entry of an order granting the relief requested herein
22 and such other and further relief as is appropriate.
23
24
25
26

1 DATED: March 2, 2015

2 MOTSCHENBACHER & BLATTNER, LLP

3 By: s/ Nicholas J. Henderson

4 Nicholas J. Henderson, OSB No. 074027

5 nhenderson@portlaw.com

6 117 SW Taylor Street, Suite 200

7 Portland, OR 97204

8 Telephone: (503) 417-0500

9 Facsimile: (503) 417-0501

10 Proposed Attorneys for Debtor

11 Earth Class Mail Corporation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT A
PROPOSED ORDER

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Earth Class Mail Corporation,
Debtor.

Case No. 15-30982-tmb11

ORDER GRANTING DEBTOR'S MOTION
FOR ORDER AUTHORIZING CONTINUED
USE OF EXISTING BANK ACCOUNTS
AND CASH MANAGEMENT SYSTEM

THIS MATTER having come before the Court upon Debtor's Motion for Order Authorizing Continued Use of Existing Bank Accounts and Cash Management System (the "Motion") [Dkt. _____]; the Court having reviewed the Motion and the Declaration of Stacey Lee in support of the Debtor's First Day Motions, and having considered the statements of counsel and the evidence presented with respect to the Motion at a hearing before the Court (the "Hearing"); and the Court having found that (1) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (2) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (3) this is a core proceeding pursuant to 28 U.S.C. § 157(b), and (4) notice of the Motion and the Hearing was sufficient under the circumstances; and after due deliberation

1 the Court having determined that the relief requested in the Motion is in the best interests of
 2 Debtor, its estate and the creditors; and good and sufficient cause having been shown;

3 IT IS HEREBY ORDERED that:

4 1. The Debtor's Motion is granted as set forth herein.

5 2. Debtor is authorized to: (a) continue to use the Bank Accounts under existing
 6 account numbers without interruption; (b) maintain its Cash Management System in substantially
 7 the same form as described in the Motion; (c) implement ordinary course changes to its Cash
 8 Management System; and (d) open and close bank accounts; provided, however, that (i) Debtor
 9 gives notice to the Office of the United States Trustee and any official committee appointed in
 10 this Chapter 11 case prior to opening or closing a bank account, and (ii) any such action is not
 11 prohibited by any other agreement Debtor may be a party to. Any new domestic bank account
 12 opened by Debtor shall (a) be opened at a bank that has an executed a uniform depository
 13 agreement on file with the Office of the United States Trustee for the District of Oregon or at a
 14 bank that is willing to execute such an agreement, and (b) be established at an institution insured
 15 by the FDIC or the FSLIC and that is organized under the laws of the United States or any state
 16 therein.

17 3. The existing agreements between Debtor and any applicable bank shall continue
 18 to govern the post-petition cash management relationship between Debtor and such bank, and all
 19 of the provisions of such agreements shall remain in full force and effect, and Debtor is
 20 authorized to comply with the terms of such agreements.

21 4. The Banks are authorized, but not directed, to continue to service and administer
 22 the Bank Accounts as accounts of Debtor as debtor-in-possession without interruption, and to
 23 receive, process, honor and pay any and all checks and drafts drawn on, or electronic transfer
 24 requests made on, the Bank Accounts after the Petition Date by the holders or makers thereof, as
 25 the case may be; unless, with respect to any particular check, Debtor has delivered a stop
 26

1 payment notice to the applicable Bank in accordance with the applicable agreement governing
2 such relationship.

3 5. Banks may rely on the representations of the Debtors with respect to whether any
4 check or other payment order drawn or issued by the Debtors prior to the Petition Date should be
5 honored or dishonored pursuant to this or any other order of this Court, and the Banks shall not
6 have any liability to any party for relying on such representations by the applicable Debtor. The
7 Debtors shall timely furnish to the Banks stop payment orders for any checks or other payment
8 orders issued prior to the Petition Date which the Debtors do not want to be honored in
9 accordance with the applicable agreement governing such relationship.

10 6. Banks are authorized to debit the applicable Bank Account in the ordinary course
11 of business without the need for further order of this Court for: (i) all checks drawn on the
12 Debtor's applicable Bank Account which are cashed at a Bank's counters or exchanged for
13 cashier's checks by the payees thereof prior to the Petition Date; (ii) all checks or other items
14 deposited in the applicable Bank Account prior to the Petition Date which have been dishonored
15 or returned unpaid for any reason, together with any fees and costs in connection therewith, to
16 the same extent Debtor is responsible for such items prior to the Petition Date; and (iii) all
17 undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Bank as
18 service charges for the maintenance of the Cash Management System.

19 7. For the Banks at which Debtor holds Bank Accounts that are party to a uniform
20 depository agreement with the Office of the United States Trustee for the District of Oregon,
21 within 15 days of the date of entry of this Order, Debtor shall: (a) contact each Bank, (b) provide
22 such Bank with Debtor's employer identification number, and (c) identify each of their Bank
23 Accounts being held at such Banks as being held by a debtor- in-possession in a bankruptcy case.

24 8. Debtor shall not be required to include the legend "D.I.P." and the corresponding
25 bankruptcy case number on existing checks. Nonetheless, as soon as practicable after the Petition
26

1 Date, Debtor will include "D.I.P." and the corresponding bankruptcy case number on any checks
2 it prints electronically or orders.

3 9. Notwithstanding anything to the contrary contained herein, any payment made, or
4 authorization contained herein, shall be subject to the requirements imposed on Debtor under any
5 order approving the use of cash collateral.

6 10. The requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to
7 the payments authorized by this Order.

8 11. This Order shall be immediately effective and enforceable upon its entry. To the
9 extent it may be applicable, the 14-day stay imposed by Bankruptcy Rule 6004(h) is hereby
10 waived.

11 # # #

12 I certify that I have complied with the requirements of LBR 9021-1(a)(2)(A).

13
14 **Presented by:**

15 MOTSCHENBACHER & BLATTNER, LLP

16
17 By: /s/ EXHIBIT

18 Nicholas J. Henderson, OSB No. 074027
19 nhenderson@portlaw.com
20 117 SW Taylor Street, Suite 200
Portland, OR 97204
Telephone: (503) 417-0500
Facsimile: (503) 417-0501

21 Proposed Attorneys for Earth Class Mail
22 Corporation

23 cc: List of Interested Parties
24
25
26